



BOARD OF APPEALS  
Diane R. Gordon, Co-Chair  
Harry Miller, Co-Chair  
Bailey S. Silbert

# *Town of Brookline*

## *Massachusetts*

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Patrick J. Ward, Secretary

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. BOA060051

Petitioners, Elizabeth Temin and Christopher Gibbons applied to the Building Commissioner for permission to add a two story addition to the east side of their existing home at 159 Summit Avenue. The application was denied and an appeal was taken to this Board.

On 3 August 2006, the Board of Appeals met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed September 14, 2006, at 7:00 p.m. in the Selectmen's Hearing Room on the sixth floor of the Town Hall as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioners, to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published August 24, and 31, 2006 in the Brookline Tab, a newspaper published in Brookline.

Copy of said notice is as follows:

TOWN OF BROOKLINE  
MASSACHUSETTS  
BOARD OF APPEALS  
NOTICE OF HEARING

Pursuant to M.G.L., C.39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: Elizabeth Temin

Location of Premises: **159 Summit Avenue**

Date of Hearing: **09/14/2006**

Time of Hearing: **07:00 p.m.**

Place of Hearing: **Selectmen's Conference Room, 6<sup>th</sup>. Floor**

A public hearing will be held for a variance and/or a special permit from:

- 1) **5.43: Exceptions to Yard and Setback Regulations; Special Permit Required.**
- 2) **5.50: Front Yard Requirements; Variance Required.**
- 3) **5.55: Front Yard for Rear Lot; Variance Required.**
- 4) **5.70: Rear Yard Requirements; Variance Required.**
- 5) **8.02.2: Alteration or Extension; Special Permit Required.**

To construct an addition per plans

at **159 Summit Avenue**

Said Premise located in a

**S-7 (Single Family) District.**

*The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.*

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At the time and place specified in the notice, a public hearing was held by this Board.

Present at the hearing was Chair, Lawrence Kaplan and Board members Murray Shocket and Sarah Sheldon.

Dr. Gibbons and architect Mr. Steve Friedlander presented the petitioners' case. The petitioner requested relief from the front and rear set-backs. The petitioner stated that this is a request for a modest two story addition to an existing single family dwelling. 159 Summit Avenue is a two story residence located adjacent to Corey Hill Park at or near the highest elevation of Corey Hill.

The property is a flag lot behind 155 and 163 Summit Avenue. The home was originally constructed in 1867. The petitioner explained that they were requesting zoning relief on the basis that the lot requires front and rear set backs each of 30 feet, and that the property was only 60 feet deep. The existing structure was built well before zoning and is pre-existing, non-conforming. The petitioner feels that all the requested relief can be in the form of a Special Permit, **Section 5.43**, since they intend to provide counter balancing amenities in the form of additional landscaping.

At the hearing, Polly Selkoe, Assistant Director for Regulatory Planning, distributed the Planning Board Report dated 7 September, 2006.

The total square footage in this single family home will remain under the permitted FAR. The addition was proposed to match the existing building materials.

Dr. Gibbons submitted a letter of support from abutters on the east side of the property. After asking the audience if anyone wished to speak for or against the appeal, and receiving no reply, the Chair asked the petitioners to detail any landscaping plans associated with this project. Dr. Gibbons explained the proposed landscaping changes were included within the scope of the project.

The petitioner reviewed the zoning relief necessary for this project to go forward. The zoning relief required is as follows:

**Section 5.43: Exceptions to yard and Setback Regulations**



**Section 5.50; Front Yard Requirements**

**Section 5.55; Front Yard for Rear Lot** – Requires that the front yard depth for a rear lot shall be the same as the minimum rear yard depth.

**Section 5.70; Rear Yard**

	Required	Existing	Proposed	Finding
Front yard setback	30'	17.9'	17.4'	<u>Special Permit*/ Variance</u>
Front Yard for Rear Lot	30'	17.9'	17.4'	<u>Special Permit*/ Variance</u>
Rear yard setback	30'	10.6'	10.6'	<u>Special Permit*/ Variance</u>

\* Under **Section 5.43**, the Board of Appeals may waive by special permit the required yard setbacks if counterbalancing amenities are provided. The Board may consider additional landscaping as the counterbalancing amenity.

**Section 8.02.2 - Alteration or Extension**

A special permit is required to alter this non-conforming structure.

The Chair then called upon Polly Selkoe of the Brookline Planning Department to present the Planning Board report. Ms. Selkoe stated that:

“The Planning Board supports this proposal to construct an addition to the property at 159 Summit Ave. The proposed design has acknowledged the historic nature of the existing property and is seeking to replicate it through the use of window treatments similar to those existing. The property is located on a rear flag lot and will not be visible from the street. The proposed addition is located on the eastern elevation and will not be visible from Corey Hill Park and the request as proposed does not exceed the permitted FAR. The Planning Board recommends approval of the plans entitled “Temlin-Gibbons Residence, 159 Summit Avenue” prepared by HMFH architects and dated 3-31-06.”

Frank Hitchcock, Senior Building Inspector, spoke on behalf of the Building Commissioner. He restated the sections of the Zoning By-Law under which relief is needed and stated that all requested relief could be granted by Special Permit. Mr. Hitchcock stated that the Building Department has no objections to the requested relief. He further stated that he will ensure that all State Code provisions are satisfied.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to grant all special permit relief that is requested and makes the following findings pursuant to **Section 9.05** of the zoning by-law:

- a. The specific site is an appropriate location for such a use, structure, or condition.

- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

Accordingly, the Board grants special permits pursuant to 5.43, 5.50, 5.55, 5.70 and 8.02.2 of the zoning by-laws, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a landscaping plan, to the Assistant Director of Regulatory Planning for review and approval to serve as the counterbalancing amenity.
2. Prior to the issuance of a building permit, the applicant shall submit final elevation plans indicating the facade materials and window details to the Assistant Director of Regulatory Planning for review and approval.
3. Prior to obtaining a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: a) a final site plan showing dimensions stamped and signed by a registered land surveyor; b) final building elevations and floor plans stamped by a registered architect and c) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of  
The Board of Appeals

*Lawrence Kaplan*

Lawrence Kaplan

Filing Date: October 23, 2006

Twenty days have elapsed and  
no appeal has been filed.

A True Copy:

ATTEST:

*Patrick J. Ward*

Clerk, Board of Appeals

A True Copy:

ATTEST:

*Patrick J. Ward*

Town Clerk